

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BIGLER JOBE STOUFFER, II,)
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 Plaintiff,)
)
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 vs.) No. CIV-09-320-C
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CHRIS EULBERG, *et al.*,)
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)
 Defendants,)

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff filed the present action pursuant to 42 U.S.C. § 1983. According to Plaintiff, Defendant Eulberg has failed to provide effective assistance of counsel during the habeas proceedings in which he represents Plaintiff. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this matter was referred to United States Magistrate Judge Robert E. Bacharach. Judge Bacharach entered a Report and Recommendations (“R&R”) recommending Plaintiff’s claim be re-characterized as brought pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1977), and then dismissed without prejudice, for failure to plead a claim for relief. Plaintiff has timely objected to the R&R. However, in that Objection, Plaintiff concedes that he has not yet pleaded facts stating a claim against Defendant Eulberg pursuant to either § 1983 or Bivens. Plaintiff requests that he be permitted to amend his Complaint to properly set forth facts

demonstrating he is entitled to relief. The Court notes that Judge Bacharach has granted Plaintiff until July 15, 2009, to file an Amended Complaint.

For the reasons set forth herein, the Court finds the R&R should be adopted in its entirety and Plaintiff's Complaint against Defendant Eulberg should be dismissed without prejudice. To the extent Plaintiff wishes to pursue claims against this Defendant, he must file an Amended Complaint by July 15, 2009, setting forth facts from which a valid § 1983 or Bivens claim exist.

Accordingly, the Court ADOPTS in full the Report and Recommendation (Dkt. No. 11) and DISMISSES the claims against Defendant Eulberg without prejudice.

IT IS SO ORDERED this 24th day of June, 2009.



ROBIN J. CAUTHRON
United States District Judge